

**EXHIBIT E**

90TH CONGRESS  
1st Session

# S. 1659

## IN THE SENATE OF THE UNITED STATES

MAY 1, 1967

Mr. SPARKMAN introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

## A BILL

To amend the Investment Company Act of 1940, as amended, and the Investment Advisers Act of 1940, as amended, to define the equitable standards governing relationship between investment companies and their investment advisers and principal underwriters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 *That this Act may be cited as the "Investment Company*  
4 *Amendments Act of 1967".*

5 SEC. 2. Section 2 (a) of the Investment Company Act,  
6 is amended as follows:

7 (1) Paragraph (5) thereof is amended to read as  
8 follows:

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1 the short-term paper, securities representing bank loans,  
2 and directors' qualifying shares) are, or after such acqui-  
3 sition will be, owned by one or more registered investment  
4 companies; and (B) such person is primarily engaged in  
5 the business of underwriting and distributing securities issued  
6 by other persons, selling securities to customers, or any one  
7 or more of such or related activities, and the gross income  
8 of such person normally is derived principally from such  
9 business or related activities."

10 SEC. 8. (a) Section 15 (a) of the Investment Company  
11 Act of 1940 is amended to read as follows:

12 "(a) It shall be unlawful for any person to serve or act  
13 as investment adviser of a registered investment company,  
14 except pursuant to a written contract, which contract,  
15 whether with such registered company or with an investment  
16 adviser of such registered company, has been approved by  
17 the vote of a majority of the outstanding voting securities of  
18 such registered company, and—

19 "(1) precisely and separately describes all com-  
20 pensation to be paid thereunder for (A) investment ad-  
21 visory services, and (B) for all other services;

22 "(2) shall continue in effect for a period more than  
23 two years from the date of its execution, only so long as  
24 such continuance is specifically approved at least an-

1 annually by the board of directors or by vote of a majority  
2 of the outstanding voting securities of such company;

3 “(3) provides, in substance, that it may be termi-  
4 nated at any time, without the payment of any penalty,  
5 by the board of directors of such registered company or  
6 by vote of a majority of the outstanding voting securi-  
7 ties of such company on not more than sixty days’ writ-  
8 ten notice to the investment adviser; and

9 “(4) provides, in substance, for its automatic termi-  
10 nation in the event of its assignment.”

11 (b) Section 15(b) of said Act is amended to read as  
12 follows:

13 “(b) It shall be unlawful for any principal underwriter  
14 for a registered open-end company to offer for sale, sell, or  
15 deliver after sale any security of which such company is the  
16 issuer, except pursuant to a written contract with such com-  
17 pany, which contract—

18 “(1) shall continue in effect for a period more  
19 than two years from the date of its execution, only so  
20 long as such continuance is specifically approved at least  
21 annually by the board of directors or by vote of a major-  
22 ity of the outstanding voting securities of such company;  
23 and

24 “(2) provides, in substance, for its automatic termi-  
25 nation in the event of its assignment.”

1 (c) Section 15(c) of said Act is amended to read as  
2 follows:

3 “(c) In addition to the requirements of subsections (a)  
4 and (b) of this section it shall be unlawful for any regis-  
5 tered investment company having a board of directors to  
6 enter into, renew, or perform any contract or agreement,  
7 written or oral, whereby a person undertakes regularly to  
8 serve or act as investment adviser of or principal under-  
9 writer for such company, unless the terms of such contract  
10 or agreement and any renewal thereof have been approved  
11 by the vote of a majority of the directors who are not parties  
12 to such contract or agreement or interested persons of any  
13 such party, cast in person at a meeting called for the purpose  
14 of voting on such approval. It shall be the duty of the  
15 directors of a registered investment company to request and  
16 evaluate, and the duty of an investment adviser to such  
17 company to furnish, such information as may be reasonably  
18 necessary to determine the reasonableness of compensation  
19 provided for in any contract whereby a person undertakes  
20 regularly to serve or act as investment adviser of such  
21 company.”

22 (d) Section 15 of said Act is further amended by strik-  
23 ing subsection (d) thereof and inserting immediately after  
24 subsection (c) a new subsection (d) to read as follows:

25 “(d) (1) All compensation for services to a registered

1 investment company received by an investment adviser,  
2 officer, director, or controlling person of or principal under-  
3 writer for such company and any affiliated person of such  
4 investment adviser, officer, director, controlling person, or  
5 principal underwriter shall be reasonable. This subsection  
6 shall not apply to sales loads for the acquisition of any secu-  
7 rity issued by a registered investment company.

8 “(2) In determining whether the compensation pro-  
9 vided for in a contract whereby any person undertakes to  
10 serve or act as investment adviser of a registered investment  
11 company is reasonable, the factors considered shall include  
12 but not be limited to the following:

13 “(A) The nature and extent of the services to be  
14 provided pursuant to such contract, including separate  
15 evaluations of the compensation to be received for in-  
16 vestment advisory services and of the compensation to  
17 be received for other services;

18 “(B) The quality of the services theretofore ren-  
19 dered to such investment company by the person under-  
20 taking to serve or act as investment adviser, or, if no  
21 such services have been theretofore rendered, the quality  
22 of the services rendered to other investment clients, if  
23 any, by such person;

24 “(C) The extent to which the compensation pro-  
25 vided for in such contract takes into account economies



1       attributable to the growth and size of such investment  
2       company and any such economies attributable to the  
3       operation of other investment companies under common  
4       management with such company, giving due considera-  
5       tion to the extent to which such economies are reflected  
6       in the charges made or compensation received for in-  
7       vestment advisory services and other services provided  
8       to investment companies having no investment adviser,  
9       other clients of investment advisers and other financial  
10      institutions, but with due allowance for any relevant  
11      differences in the nature and extent of the services  
12      provided;

13       “(D) The value of all benefits, in addition to com-  
14      pensation provided for in such contract, directly or indi-  
15      rectly received or receivable by the person undertaking  
16      to serve or act as investment adviser by reason of his  
17      relationship to such investment company;

18       “(E) Such other factors as are appropriate and  
19      material.

20       “(3) In any action pursuant to this subsection, no find-  
21      ing shall be made that any compensation provided for in a  
22      contract or other arrangement approved or otherwise au-  
23      thorized in compliance with the provisions of this title  
24      (other than the requirement of reasonableness in paragraph

1 (1) of this subsection (d) ) is unreasonable unless the party  
2 seeking such finding sustains the burden of proving by a  
3 preponderance of evidence that such compensation is unrea-  
4 sonable.

5 “(4) No action shall be maintained pursuant to this  
6 subsection to recover compensation paid more than two years  
7 prior to the date on which such action was instituted.

8 “(5) No person shall be held liable in any action par-  
9 suant to this subsection for damages in excess of the differ-  
10 ence between the amount of compensation actually received  
11 by such person and the amount determined to be reasonable  
12 compensation for the period for which the action is brought  
13 and the interest on the difference between such amounts.

14 “(6) A finding that any compensation subject to the  
15 provisions of this subsection is unreasonable shall not be  
16 deemed to be a finding of a violation of this title for purposes  
17 of sections 9 and 49 of this title, section 15 of the Securities  
18 Exchange Act of 1934, and section 203 of title II of this  
19 Act.”

20 (e) Section 15 of said Act is further amended by add-  
21 ing a new subsection (g) to read as follows:

22 “(g) It shall be unlawful for any investment adviser  
23 of a registered investment company or any affiliated person  
24 of such investment adviser to sell any assets of or any secu-  
25 rities issued by such investment adviser or a controlling



1 person of such investment adviser, or otherwise to receive  
2 any benefit, in connection with a transaction by which an-  
3 other person obtains control of such investment adviser or  
4 succeeds to any relationship between such investment adviser  
5 and a registered investment company, if any terms, condi-  
6 tions, or understandings, express or implied, in connection  
7 with such transaction are likely to impose additional burdens  
8 on the investment company or limit its freedom of future  
9 action or otherwise is inequitable to such investment com-  
10 pany."

11 SEC. 9. (a) Section 17 (f) of the Investment Company  
12 Act of 1940 is amended to read as follows:

13 "(f) Every registered management company shall  
14 place and maintain its securities and similar investments in  
15 the custody of (1) a bank or banks having the qualifications  
16 prescribed in paragraph (1) of section 26(a) of this title  
17 for the trustees of unit investment trusts; or (2) a company  
18 which is a member of a national securities exchange as de-  
19 fined in the Securities Exchange Act of 1934, subject to such  
20 rules and regulations as the Commission may from time to  
21 time prescribe for the protection of investors; or (3) such  
22 registered company, but only in accordance with such rules  
23 and regulations or orders as the Commission may from time  
24 to time prescribe for the protection of investors. Rules, reg-